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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/500,187      | 06/25/2004  | Pierre Wuersch       | 112701-427          | 5338             |

7590 11/07/2006

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EXAMINER

PRATT, HELEN F

ART UNIT PAPER NUMBER

1761

DATE MAILED: 11/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/500,187

Applicant(s)

WUERSCH ET AL.

Examiner

Helen F. Pratt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 10-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 10-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7, 10-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ringe (5,024,996).

Ringe discloses a food product which contains soluble fiber, oat bran concentrate and cereal oat bran (claim 3) (abstract and col. 3, lines 55-56, 65-70, col. 9, lines 30-60, col. 4, lines 10-15, col. 5, lines 11-19, col. 6, lines 5-10). Soluble fiber as in claim 2 is disclosed in col. 5, lines 50-55. Claims 1-3, 11 differ from the reference in the particular amounts of oat bran concentrate. The reference does not disclose individual amounts of oat bran concentrate (obc) or oat bran. However, it is seen that it would have been within the skill of the ordinary worker to use particular amounts of OBC for its known function of adding a concentrated source of bran to the product. Therefore, it would have been obvious to use known ingredients in known amounts to make the claimed product.

Claim 4 further requires other ingredients such as sweeteners, and fat, which are disclosed in col. 6, lines 40-70. Other cereals, fruits and nuts are seen to have been common ingredients in cereals.

Claim 5 further requires that the composition be made into various forms. The reference discloses cereal, and cereal flakes. Nothing new is seen in making the composition into other forms such as a bar or a biscuit, which only further require a binder. Certainly, cereal can be eaten as a snack. Since the composition is known as in claim 6, it would have been suitable for sports or food intake control because soluble fiber is known to enhance food intake by acting as a bulking agent. Therefore, it would have been obvious to make the composition into various forms, which are suitable as in claims 6-7 since the composition has been shown.

Claim 10 is to a method of making a food product containing the ingredients of claim 1 in particular amounts. The discovery of an optimum value of a result effective variable is ordinarily within the skill of the art. In re Boesch, 617 F.2d 272, 276, 205 USPQ 215, 219 (CCPA 1980). In developing a fiber containing product, properties such as amounts of ingredients are important. It appears that the precise ingredients as well as their proportions affect the functionality of a fiber containing product, and thus are result effective variables which one of ordinary skill in the art would routinely optimize. Certainly, it would have been within the skill of the ordinary worker to use particular amounts as in claim 10 for their known functions, which would have fulfilled the intended uses of the product since the composition is known. Therefore, it would have been obvious to make a product as shown by the reference, which has the composition and characteristics as in 10.

Claim 12 further requires adding the cereal bran to the viscous soluble fiber and oat bran concentrate. Ringe discloses that it is known to blend wet ingredients with the

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dry ingredients (col. 7, lines 25-40). Therefore, it would have been obvious to add the dry ingredient cereal bran to the soluble fiber and oat bran concentrate.

Claim 13 further requires particular amounts of fiber and bran. Ringe discloses the use of from 10 to 70% of oat bran and oat bran concentrate, which is within the claimed amounts (col. 13, lines 45-49). Soluble fiber is from used in amounts of from 1-5 to 1 insoluble fiber, which is within the claimed amount (col. 13, lines 30-40).

Therefore, it would have been obvious to use known amounts to as disclosed by Ringe.

The limitations of claims 14-17 have been disclosed above and are obvious for those reasons.

Claims 18-28 further require that the method is for reducing the food intake of an individual as in claim 18, and for providing nutrition to a diabetic patient as in claim 23. As the composition is known and the method of making it is known, giving the composition to various groups of people would inherently provide for the claimed functions of reducing food intake and providing nutrition. Therefore, it would have been obvious to provide a known composition for its known function in various diets.

## ARGUMENTS

Applicant's arguments filed 10-6-06 have been fully considered but they are not persuasive. Applicants argue that the reference does not disclose the claimed amounts of ingredients. This is not seen as disclosed above.

Applicants argue that the use of a viscous soluble fiber is used with the brans that the viscosity is much higher than when one of the ingredients is used. This is

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expected because bran is not a viscous ingredient, and is not a hydrocolloid, which is naturally viscous.

Applicants argue that the use of viscous soluble fiber (vsf) promotes a feeling of satiety. Nothing new is seen in this, which is well known.

Applicants argue that Ringe does not teach the physiological significance of the viscosity of the ingested product and of using lesser amounts to achieve palatability.

However, nothing has been shown that the product of Ringe is not palatable.

Applicant's claims are open comprising type claims, which do not exclude other ingredients as are the claims of Ringe. High amounts of soluble fiber are not particularly used in Ringe who can use a ratio of soluble fiber to insoluble fiber of 1-5:1.

It is seen that it would have been within the skill of the ordinary worker to vary the amounts of known ingredients to produce known products.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hp 11-3-06

  
**HELEN PRATT**  
**PRIMARY EXAMINER**